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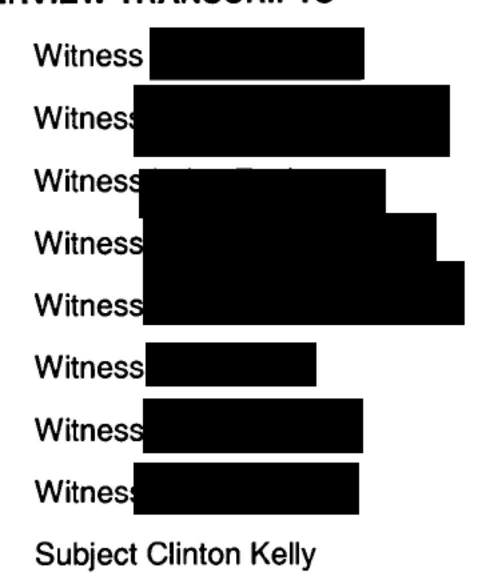
IV 2425546

AUDIO / VIDEO TRACKING SHEET

PERSONNEL INVESTIGATION FORM

INVESTIGATIVE SUMMARY

INTERVIEW TRANSCRIPTS



Witness [redacted]

Witness [redacted]

Witness [redacted]

Witness [redacted]

Witness [redacted]

Witness [redacted]

Witness [redacted]

Witness [redacted]

Subject Clinton Kelly

EXHIBITS

A. Force Package containing one (1) DVD
B. One (1) DVD containing three (3) synced DVTEL videos used during Subject interview
C. One (1) DVD containing audio from Witness interviews and Subject interview

MISCELLANEOUS DOCUMENTS

- Manual of Policy and Procedures sections.
- Witness Administrative Rights Forms Subject Administrative Rights Forms
- Lomita Station Patrol Failure Supporting Documents

INTERNAL AFFAIRS BUREAU
INVESTIGATIVE SUMMARY
IV2425564

SUBJECT:	**Clinton Kelly, #[redacted]** **Deputy Sheriff Generalist**
LOCATION:	**Men's Central Jail** **Module 2600/2800 (Laundry Area)**
DATE/TIME OF INCIDENT:	**April 15, 2017 / 1920 Hours**
DATE OF DEPARTMENT KNOWLEDGE:	**April 15, 2017**

ALLEGATION

It is alleged Deputy Clinton Kelly, #[redacted], while on duty at Men's Central Jail, was involved as a witness in a use of force, and that he failed to assist other personnel actively involved in a violent physical altercation.

Deputy Kelly provided a written supplemental report accounting for his actions and documenting what he witnessed, however, the report he submitted did not depict what was seen on DVTEL closed circuit television (CCTV) surveillance footage.

POLICY SECTION

[redacted]	[redacted]
Honesty Policy	MPP Section 3-01/040.69
Dishonesty / False Statements As it relates to reports or documents submitted	MPP Section 3-01/040.70
Dishonesty / Making False Statements During Departmental Internal Investigations	MPP Section 3-01/040.75
[redacted]	[redacted]



[redacted]

Dishonesty / False Information in Department Records — MPP Section 3-01/100.35
As it relates to documenting false information in a force report

SYNOPSIS

On April 15, 2017, Witness Deputies [redacted] and Witness Custody Assistant (C/A) [redacted] were all involved in a use of force with Inmate [redacted] Bkg. #4955179 in the laundry room of Module 2600. While reviewing DVTEL CCTV video footage after the incident, video revealed Subject Kelly was inside the module during the incident, and he failed to assist his partners who were involved in the physical altercation.

On DVTEL video footage, Subject Kelly was seen walking directly toward Witnesses [redacted] and [redacted] as they began to physically struggle with the inmate on the lower tier, just outside the laundry room entrance in front of him. DVTEL video then showed Subject Kelly continue to walk toward them as the physical altercation moved into the laundry room with Witness [redacted] following them into the room with her MK-9 Oleoresin Capsicum (OC) canister raised in front of her. Witness [redacted] was then seen walking backward out of the laundry room with her MK-9 still raised in front of her where video then showed her spraying into room in front of Subject Kelly. Subject Kelly continued to walk in the direction of where the violent physical altercation was occurring involving his partners and the inmate, however, he then turned to his right at the module entry way and walked off the lower tier toward the front door of the module and out of camera view.

Subject Kelly was then observed on DVTEL video looking around the corner, toward the laundry room area from a distance, and then walking back and forth in the entry way, before eventually walking toward the laundry room. Once Subject Kelly arrived at the laundry room doorway, he was seen on DVTEL video removing a pair of latex gloves from his left rear pants pocket, and he began to put them on while his partners were actively fighting directly in front of him with the suspect. DVTEL video showed ultimately showed Subject Kelly never intervened to assist his partners while he stood in the laundry room entrance. Once responding deputies arrived at Module 2600 from other locations inside Men's Central Jail to assist Witnesses [redacted] and [redacted] Subject Kelly was seen moving away from the laundry room doorway, and then walking away.

Sergeant Lass directed Subject Kelly to provide a written supplemental report to document his actions and the force he witnessed involving other Department members.

Subject Kelly's written supplemental report stated he heard a commotion coming from the laundry room area, and he walked to the laundry room where he saw an inmate lying on his stomach on the floor with his hands behind his back. Subject Kelly's written report stated he observed two deputies on their knees on both sides of the inmate, and it appeared they had full control of the suspect; and that he confirmed with the deputies that they were safe, and the area was secure, before leaving to get a Title-15 scanner and resuming an inmate safety check.

A formal investigation was initiated to ascertain if policy violations had occurred.

WITNESS INTERVIEWS

Investigator's Note: On the pre-printed questionnaire, Lieutenant Hiraoka put down the incorrect month. He wrote down May and the correct month was April. There was no force in Module 2600/2800 in the laundry room area, on May 15, 2017.

WITNESS DEPUTY [redacted] #[redacted]

On November 14, 2017, at 0940 hours, Men's Central Jail Lieutenant Tadashi Hiraoka and Sergeant Carl Adams interviewed Witness [redacted] in the Compliance Lieutenant's office at Men's Central Jail. This interview was digitally recorded **[Exhibit C]**.

Witness [redacted] said he was working and assigned to Module 2600/2800 Prowl movement. Witness [redacted] said he was removing an inmate from his trustee duties. Witness [redacted] said Witness [redacted] was with him and Subject Kelly was with him for a short time. Witness [redacted] said Subject Kelly walked away and returned with Witness [redacted]

Witness [redacted] said while he was engaged in the physical altercation inside the laundry room with Witness [redacted] and Witness [redacted] they needed assistance. During the fight in the laundry room, Witness [redacted] said he was struck twice with OC spray; once on his leg and once on his arm. Witness [redacted] said Witness [redacted] was struck in the face with OC, that they were both affected by the spray, and needed help.

Witness [redacted] said they were unable to handcuff the suspect and needed the help of extra personnel to control and handcuff the suspect. Witness [redacted] said at no time did he see Subject Kelly, nor did Subject Kelly ask them if they needed assistance inside the laundry room.

WITNESS DEPUTY [redacted] #[redacted]

On November 9, 2017, at 1101 hours, Men's Central Jail Lieutenant Tadashi Hiraoka and Sergeant Edward Colton interviewed Witness Jonathon [redacted] in the Compliance Lieutenant's office at Men's Central Jail. This interview was digitally recorded **[Exhibit C].**

Witness [redacted] said he was working on the 2000 Floor and was assigned as Module 2500/2700 Prowl Movement. Witness [redacted] said he was assisting with pill call with other module deputies when Subject Kelly stepped out of Module 2600/2800 and asked for help inside the module so he could finish his safety check.

Witness [redacted] said Deputy [redacted] was assigned as the safety check deputy in Module 2500/2700, so he intervened and asked Subject Kelly if he wanted him to assist to ensure everyone remained in compliance on inmate safety checks.

Witness [redacted] said he followed Subject Kelly into Module 2600/2800 and asked him what he wanted. Witness [redacted] said Subject Kelly told him, "They need you over there" and when he turned to look, he saw Witnesses [redacted] and [redacted] talking to an inmate in the doorway of the laundry room.

Witness [redacted] walked over to Witnesses [redacted] and [redacted] to assist them with the inmate. Witness [redacted] said the inmate was upset and was not following directions. Witness [redacted] said the inmate was given a change of clothes and was instructed to change out his trustee clothing, when the inmate untucked his pants from his socks and raised his hands as if he wanted to fight. Witness [redacted] said he grabbed the inmate and told him to turn around, at which time he actively resisted and attempted to fight. Witness [redacted] said he believed the inmate swung, but Witness [redacted] managed to block the strike.

Witness [redacted] said the fight ensued into the laundry room and they could not control the suspect because he was not wearing a shirt and he could not grab onto him. Witness [redacted] said he had to conduct a rear takedown and he grabbed the suspect around his upper torso or chest area, and used his own body weight to take the suspect to the ground.

Witness [redacted] said Witness [redacted] was trying to grab the suspect's hands, at which time, they were both pepper sprayed by Witness [redacted] Witness [redacted] said he knew he would have about six (6) minutes before he would be no longer useful due to being pepper sprayed, and he held on to the suspect while hoping Witness [redacted] would be able to gain control of his wrists so they could handcuff him.

Witness [redacted] said he was holding the suspect down on the floor when he was sprayed again with OC spray on his face and shoulder by Witness [redacted] and he disengaged from the suspect. Witness [redacted] said the suspect then squirmed toward the exit of the laundry room and he struck the suspect several times in the chest and ribcage area with his fist.

Witness [redacted] said they were actively fighting with the suspect and could have used assistance. Witness [redacted] said he then saw green pants and black boots, and he looked up and saw Subject Kelly standing just inside the laundry room doorway. Witness [redacted] said he thought his "Calvary" was there to save the day, but Subject Kelly did not assist or help him.

Witness [redacted] said he saw Subject Kelly putting on gloves and he believed the reason why he did so was because he probably saw all the pepper spray and he did not want to touch the suspect with his bare hands.

Witness [redacted] said he was actively fighting with a suspect approximately five (5) to six (6) feet away from Subject Kelly, and he needed assistance. Witness [redacted] said he thought Subject Kelly was going to intervene and assist in controlling the suspect, but Subject Kelly did not help. Witness [redacted] said at no time did Subject Kelly ask if they needed help, and he never asked if the situation was secure.

Witness [redacted] said after what felt like an eternity, he saw Witness [redacted] force his way through the doorway into the laundry room, and he helped hold down and control the suspect. Witness [redacted] said additional deputy personnel entered the laundry room to assist him, and at that point, he disengaged and tried to compose himself because he felt like he was on fire from being pepper sprayed twice.

Witness [redacted] said saw Subject Kelly in the locker room at Men's Central Jail the next day, and Subject Kelly asked him what happened in the Module 2600/2800 laundry room the day before. Witness [redacted] said he looked at Subject Kelly and told him, "I know you were there. You were standing in the doorway." Witness [redacted] said it was at this time when he started piecing things together, and realized Subject Kelly was the first deputy on scene, but he did not engage or take any action to help him.

Witness [redacted] said he injured his lower back and his hand during the fight with the suspect. Witness [redacted] said he was off work for two weeks and then on light duty for two weeks upon returning to work due to the injuries he sustained during the fight.

WITNESS CUSTODY ASSISTANT [redacted] #[redacted]

On November 13, 2017, at 1619 hours, Men's Central Jail Lieutenant Tadashi Hiraoka and Sergeant Edward Colton interviewed Witness [redacted] in the Compliance Lieutenant's office at Men's Central Jail. This interview was digitally recorded **[Exhibit C]**.

Witness [redacted] said she was working as the booth officer in Module 2600/2800. Witness [redacted] said they were attempting to cancel the suspect's inmate worker status as a trustee for roaming out of his cell. Witness [redacted] said she recognized the suspect as a problematic inmate, and she heard him tell Witness [redacted] "Fuck this" while they were speaking to each other, so she exited her booth to back up her partner in case something happened because he was by himself.

Witness [redacted] said Witness [redacted] was not assigned to Module 2600/2800, but he walked into the module and approached her and Witness [redacted] as they were speaking to the problematic inmate.

Witness [redacted] said Subject Kelly was also assigned to Module 2600/2800, but she did not recall seeing him during the force incident. Witness [redacted] said she believed Subject Kelly was conducting a Title-15 walk.

Witness [redacted] said Witness [redacted] told the inmate to turn around and that was when the fight started. Witness [redacted] said she believed the deputies needed assistance controlling the suspect due to the fact he was fighting and kicking toward the deputies. Witness [redacted] said that she initiated the radio broadcast of "415 deputy involved in 2600" and she employed her OC spray twice during the incident, but it appeared to have no effect on the suspect.

Investigator's Note: "415 deputy involved" is a radio code indicating a deputy sheriff is involved in a fight and needs help urgently.

Witness [redacted] could not recall who the assisting deputies were, but they entered the laundry room and assisted with controlling the suspect. Witness [redacted] said she did not recall seeing Subject Kelly during the fight with the inmate, and he did not ask her if they needed help or if the situation was secure.

WITNESS DEPUTY [redacted] #[redacted]

On November 9, 2017, at 1127 hours, Men's Central Jail Lieutenant Tadashi Hiraoka, and Sergeant Edward Colton interviewed Witness [redacted] in the Compliance Lieutenant's office at Men's Central Jail. This interview was digitally recorded **[Exhibit C].**

Witness [redacted] said he was working as the 2000 Floor prowler or pill call deputy and he was conducting pill call with Witness Deputy [redacted] when they heard radio traffic of a 415 deputy involved in the laundry room of one of the modules. Witness [redacted] said as he entered the module, he was directed to the laundry room area where he saw Subject Kelly standing outside or inside of the laundry room while Witness [redacted] a trainee deputy (Witness [redacted] and a C/A (Witness [redacted] were inside the laundry room fighting with an inmate. Based on his observations, Witness [redacted] said he believed Witnesses [redacted] and [redacted] needed assistance in controlling the suspect, and he moved past Subject Kelly and engaged with the suspect to assist.

Witness [redacted] said he could not recall if Subject Kelly engaged in the fight after he entered the room to assist Witnesses [redacted] and [redacted] because he was focused on assisting his partners in attempting to control the suspect.

WITNESS DEPUTY [redacted] [redacted]#[redacted]

On November 13, 2017, at 1549 hours, Men's Central Jail Lieutenant Tadashi Hiraoka, and Sergeant Edward Colton interviewed Witness [redacted] [redacted] in the Compliance Lieutenant's office at Men's Central Jail. This interview was digitally recorded **[Exhibit C]**.

Witness [redacted] said he was working in Module 2500/2700 when he heard a radio broadcast of a deputy involved 415 and responded with other assisting deputy personnel. Witness [redacted] said as he entered the laundry room, he saw deputies struggling with an inmate. Witness [redacted] said the deputies needed assistance in controlling the inmate, and he was able to secure an arm.

Witness [redacted] said if he did not help, the fight would have gone on longer. Witness [redacted] said he smelled OC spray, but he did not witness who sprayed OC inside the laundry room. Witness [redacted] said he suffered a contusion to his right hand during the fight with the suspect.

WITNESS DEPUTY [redacted] [redacted]#[redacted]

On November 13, 2017, at 1528 hours, Men's Central Jail Lieutenant Tadashi Hiraoka, and Sergeant Edward Colton interviewed Witness [redacted] in the Compliance Lieutenant's office at Men's Central Jail. This interview was digitally recorded **[Exhibit C].**

Witness [redacted] said she was working as the 2000 Floor inmate feeding deputy. Witness [redacted] said she was conducting pill call near the 2000 Control Booth located in the middle of the 2000 floor hallway when she heard a female voice transmit a radio broadcast of a deputy involved 415 in Module 2600. Witness [redacted] said she, along with other personnel, ran to Module 2600 to assist. Witness [redacted] said when she first arrived, she believed there was sufficient personnel, but the fight continued inside the laundry room and was moving toward the laundry room door, so she made the decision to assist in controlling the inmate by grabbing his wrist or hand.

Witness [redacted] said she did not recall seeing Subject Kelly at any time during the incident.

WITNESS DEPUTY [redacted] [redacted]#[redacted]

On November 9, 2017, at 1142 hours, Men's Central Jail Lieutenant Tadashi Hiraoka, and Sergeant Edward Colton interviewed Witness [redacted] in the Compliance Lieutenant's office at Men's Central Jail. This interview was digitally recorded **[Exhibit C].**

Witness [redacted] said he was working on the 2000 floor in Module 2100/2300. Witness [redacted] said he was conducting pill call inside Module 2100/2300 when he heard 415 deputy in Module 2600/2800 over his handheld radio.

Witness [redacted] said he ran down the 2000 floor hallway to Module 2600/2800, and when he entered, he saw two or three deputies struggling with an inmate on the floor inside the laundry room. Witness [redacted] said the inmate was not complying with their

commands, he continued to resist, and then he began kicking his legs. Witness [redacted] said he believed the deputies needed assistance, so he applied a hobble.

Witness [redacted] said he was the fourth or fifth deputy to arrive in the laundry room. Witness [redacted] said he saw Witnesses [redacted] and [redacted] inside the laundry room, and toward the end of the incident there were approximately 5-10 additional personnel. Witness [redacted] said he did not see Subject Kelly.

WITNESS CUSTODY ASSISTANT [redacted] #[redacted]

On November 13, 2017, at 1508 hours, Men's Central Jail Lieutenant Tadashi Hiraoka, and Sergeant Edward Colton interviewed Witness [redacted] in the Compliance Lieutenant's office at Men's Central Jail. This interview was digitally recorded **[Exhibit C].**

Witness [redacted] said she was working as the 2800 module officer. Witness [redacted] said Subject Kelly was starting an inmate safety check and he was standing near the day room outside the officer's cage when the use of force incident occurred. Witness [redacted] said she believed Subject Kelly walked over to where the force was occurring, but she did not see if he was involved with the force because she was inside the officer's cage farthest from the laundry room and her view was partially blocked.

Witness [redacted] said she could hear an argument getting "a little heated." Witness [redacted] said she then heard scuffling coming from the laundry room area, and she smelled OC spray in the air, but did not see who employed the spray.

SUBJECT DEPUTY CLINTON KELLY #[redacted]

On November 28, 2017, at 1013 hours, Men's Central Jail Lieutenant Tadashi Hiraoka and Sergeant Edward Colton interviewed Subject Clinton Kelly in the Compliance Lieutenant's office at Men's Central Jail. Attorney Sherry Lawrence from the law offices of Stone Busailah attended the interview representing Subject Kelly. This interview was digitally recorded **[EXHIBIT C].**

Subject Kelly was hired as a Deputy Sheriff Trainee on June 11, 2007. Subject Kelly has been a deputy sheriff since November 4, 2007 and was assigned to Twin Towers Correctional Facility. On [redacted] Subject Kelly transferred to [redacted]. On [redacted], Subject Kelly transferred to [redacted]. On [redacted], Subject Kelly transferred to [redacted] On [redacted] Subject Kelly was a [redacted] and transferred to Men's Central Jail.

Subject Kelly said he worked PM shift on April 15, 2017, and he was assigned to the 2000 Floor as Safety Check #1. Subject Kelly said there was a force incident involving an inmate in the Module 2600/2800 laundry room.

At the beginning of his subject interview, Subject Kelly said he provided an accurate supplemental report of what he had witnessed, and he did not need to add any details.

Subject Kelly said he did want to provide additional information surrounding the incident, but he did not need to add to his supplemental report.

Subject Kelly said he had been continually briefed for months on the importance of being on time for security checks due to lawsuits, and that security checks are a high priority.

Subject Kelly said prior to the use of force, he heard yelling coming from in front of the laundry room area. Subject Kelly said he exited the booth and walked to the laundry room where he heard an inmate apologizing to Witnesses [redacted] and [redacted] Subject Kelly said the inmate was quite calm, was not yelling, and he kept apologizing. Subject Kelly said that his security check was very important, so he went to the main hallway and asked Deputy [redacted] to stand with his partners in the laundry room. Subject Kelly said Deputy [redacted] was busy and Witness [redacted] walked into the module and assisted Witnesses [redacted] and [redacted]

Subject Kelly said he went to secure numerous inmates due to the fact he did not want other inmates to interfere with whatever was going on with deputies and the inmate at the laundry room. Subject Kelly said he closed gates/doors and told the inmates in the shower to standby until the incident was over.

Subject Kelly said he then retrieved his scanner and was going to conduct his security check. Subject Kelly said his radio chirped alerting him to a low battery, and it was an officer safety issue to walk down a row without a radio. Subject Kelly said he was walking out of the module when he heard a commotion, and he heard radio traffic of a 415 deputy in the laundry room. Subject Kelly said when he turned the corner, he heard Witness [redacted] giving verbal commands to stop fighting, then put her MK-9 toward the door. Subject Kelly said he did not see if Witness [redacted] hit anyone with the spray.

Subject Kelly said once he got to the door, he saw an inmate laying on his stomach with his hands behind his back and the inmate was not moving or resisting. Subject Kelly said the deputies were not giving the inmate any verbal commands, and they were in the process of handcuffing the inmate.

Subject Kelly said since he heard the radio traffic and knew that sufficient personnel were coming, he left the laundry room to retrieve a new radio battery, so he could continue his security check.

Subject Kelly said when he got back to the booth, Sergeant Lass called and told him to come to the sergeant's office. Subject Kelly said he was busy with his security check and would see him after the walk was concluded.

Subject Kelly said he did not report witnessing force until Sergeant Lass instructed him to write a supplemental report of the incident.

Subject Kelly wrote in his supplemental report that he confirmed his partners were safe and the area was secured. Subject Kelly said this was based on his observations, and he did not physically ask anyone if they needed assistance.

Investigator's Note: At this point in the subject interview, the tape recorder was paused and Subject Kelly was shown three (3) synced DVTEL videos of himself inside Module 2600/2800 on April 15, 2017.

After viewing the videos, Subject Kelly said the videos were accurate, but that was not how he remembered the incident. Subject Kelly said his interest was focused on the Title-15 check, and he apologized several times during the interview.

Subject Kelly said he went to the hallway to have another deputy stand by with his partner due to the fact all inmates are unpredictable and it could go "south" or bad at any time.

Investigator's Note: Prior to the force incident, Subject Kelly was seen on DVTEL video moving inmates away from the laundry room, where it appeared he secured several behind a door, and directed several other inmates into an unsecured dayroom area.

Subject Kelly said he moved the inmates to keep them from interfering with whatever was going on in the laundry room.

Subject Kelly said before he started his security check, his radio needed a battery. Subject Kelly said he was walking out of the module to retrieve a battery, when he heard a 415 deputy over the radio, but he did not know the location of the fight. Subject Kelly said his main focus was to retrieve a battery. He peered around the corner to see if the fight was in his laundry room. He said he walked back to the laundry room and looked down and heard verbal commands given. Subject Kelly ended his statement with "sorry."

Subject Kelly was asked, once he heard the verbal commands did he observe the custody assistant employ her spray or not? Subject Kelly said everything happened so fast, he did not recall the incident, and he was "sorry."

Subject Kelly's written supplemental report states, he turned the corner leading to the laundry room to find out what the commotion was and saw C/A [redacted] spray OC with her MK-9. He said from his memory, it was correct, but after watching DVTEL video, it was not.

Subject Kelly was asked about his written supplemental report where he stated he walked over to the laundry room and looked inside, and he saw Inmate [redacted] on his stomach on the floor with his hands behind his back, and it appeared that Deputy

[redacted] and Deputy [redacted] had full control over him. Subject Kelly acknowledged after watching DVTEL video, his statement in his supplemental report was not true.

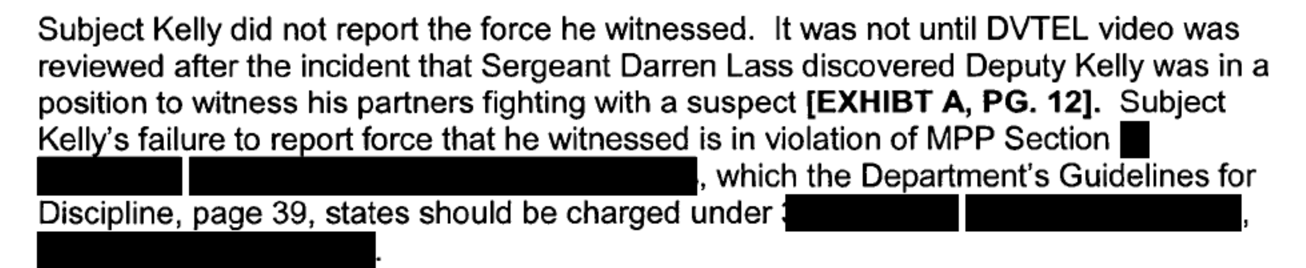
In his written supplemental report, Subject Kelly stated he was standing at the entrance door to the module when the incident occurred. In fact, the video showed Subject Kelly was standing in the lower tier and was facing Witness [redacted] and [redacted] when the physical altercation began. Subject Kelly did not remember or recall why he did not transmit radio traffic, or why he did not recall seeing them struggling with an inmate.

Subject Kelly said he did not know why he put gloves on in the laundry room. Subject Kelly said he did not have a reason for not assisting his partners, only that he had a dual interest. Subject Kelly said his focus was on backing up his partners and doing the security checks.

Subject Kelly said he deeply apologizes to his partners and the Department for the incident. Subject Kelly said his head was not in the ballgame, because he was focused on security checks.

FACTS

There is evidence in this administrative investigation to support the following:



Subject Kelly did not report the force he witnessed. It was not until DVTEL video was reviewed after the incident that Sergeant Darren Lass discovered Deputy Kelly was in a position to witness his partners fighting with a suspect **[EXHIBT A, PG. 12]**. Subject Kelly's failure to report force that he witnessed is in violation of MPP Section [redacted], which the Department's Guidelines for Discipline, page 39, states should be charged under [redacted], [redacted].

A review of DVTEL video also revealed that Subject Kelly was also in a position where he could have been the first deputy to assist his partners involved in a violent physical altercation with a suspect in his presence. It took seven (7) deputies and one (1) custody assistant to gain control over the suspect while Subject Kelly watched and offered no assistance. Five (5) of the deputies who used force ran to Module 2600/2800 from other locations in Men's Central Jail while Subject Kelly was present and did nothing.

Instead of assisting his partners involved in fight with a suspect in his presence, Subject Kelly turned away and walked to the front entrance door to Module 2600/2800 as if he was going to leave, then turned around to peak his head around the corner and take a look toward the laundry room from a distance, then turned around toward the entrance door again, then turned around, where he eventually walked around the corner from the entrance to the module and walked toward the doorway of the laundry room. Video footage shows Subject Kelly stood in the doorway and watched his partners fighting with a suspect directly in front of him, where he then reached into his left rear pants

pocket to remove a pair of latex gloves, put them on, and continued to watch the fight until he moved away from the laundry room.

Subject Kelly's failure to assist his partners involved in a violent fight in his presence is in violation of [redacted], which states uniformed members shall assist and protect each other, and shall not display cowardice.

After the incident, Subject Kelly authored a supplemental report which was not consistent with what DVTEL video footage showed actually occurred.

Department members are held to the highest standards of ethics, with honesty being of paramount importance to the credibility and integrity of all Department members. Subject Kelly's supplemental report failed to disclose material facts, destroys trust, and is in violation of MPP 3-01/040.69 Honesty Policy, as well as MPP 3-01/040.70 Dishonesty / False Statements, which states members shall not make false statements in reports or documents submitted.

Subject Kelly's supplemental report has multiple false statements that are easily disproved and exposed as false when comparing what he wrote in his report to what DVTEL video footage shows actually occurred.

Subject Kelly wrote in his supplemental report that he was standing at the entrance door to Module 2600/2800 when he heard a commotion coming from the laundry room in front of Module 2600. DVTEL video footage clearly shows Subject Kelly was not standing at the entrance door (which would have blocked his view toward the laundry room and most of the lower tier). Instead, Subject Kelly was actually standing in the 2800 side of the lower tier, and he was directly facing Witnesses [redacted] and [redacted] while they were dealing with the suspect, and then physically struggling with him at the entrance to the laundry room **[EXHIBIT B].**

Subject Kelly wrote in his supplemental report that as he walked into the module from the entrance door to Module 2600/2800, he turned the corner leading to the laundry room, and he saw Witness Custody Assistant [redacted] standing in front the laundry room door facing the inside. Once again, DVTEL video footage shows Subject Kelly was actually standing in the lower tier directly facing Witnesses [redacted] and [redacted] and Subject Kelly was walking directly toward them as they began to physically struggle with the suspect **[EXHIBIT B].**

Subject Kelly wrote in his supplemental report that after he turned the corner, he then saw Witness [redacted] employ her MK-9 OC canister and spray into the laundry room. DVTEL video footage shows Subject Kelly was walking directly toward Witnesses [redacted] and [redacted] as they began to physically struggle with the suspect, with the struggle then moving into the laundry room. Video shows Witness [redacted] entered the laundry room with her MK-9 in her right hand, and then immediately walked backwards out the laundry room while spraying OC into the laundry room. Instead of immediately responding to assist his partners who were involved in a fight with a suspect, DVTEL video shows Subject Kelly turned to his right when he reached the

Module 2600/2800 entrance door entry way, and he walked toward the entrance door, as if to exit the module **[EXHIBIT B].**

DVTEL video footage shows Subject Kelly turned around in the Module 2600/2800 entrance door entry way, and he peaked his head around the corner, looking toward the laundry room entrance door to see what was happening from a distance while Witness [redacted] can be seen requesting assistance by transmitting "415 deputy involved 2600" on her handheld radio while spraying the suspect with her MK-9 at the same time. This information is not in Subject Kelly's supplemental report, and video shows him turn around and again walk toward the module's entrance door instead of assisting his partners who were in a violent fight with a suspect **[EXHIBIT B].**

Subject Kelly wrote in his supplemental report that as he arrived at the laundry room door, he saw he suspect laying on his stomach on the floor with his hands behind his back, with Witnesses [redacted] and [redacted] on their knees on both sides of him, and it appeared they had full control of the suspect. Subject Kelly wrote as soon as he confirmed his partners were safe, and the area was secure, he returned to the Module 2600 booth where he retrieved a Title-15 scanner, and he resumed his security check of Module 2600/2800. DVTEL video footage shows Subject Kelly's statements were false. Video footage shows Subject Kelly walked back onto the lower tier, and then walked toward the entrance door to the laundry room where he stopped in the doorway and watched Witnesses [redacted] and [redacted] fighting with the suspect and Witness [redacted] trying to assist them. Subject Kelly was then seen removing a pair of latex gloves from his left rear pocket and slowly putting them on while his partners were continuing to fight with the suspect directly in front of him. A review of all available DVTEL video footage capturing the incident showed Subject Kelly did not assist or help his partners at any time **[EXHIBIT B].**



OFFICE OF THE SHERIFF



COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM McDONNELL, SHERIFF

April 12, 2018

Deputy Clinton S. Kelly, #[redacted]

Dear Deputy Kelly:

LETTER OF INTENT

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective the close of business May 3, 2018.

An investigation under IAB File Number IV2425564, conducted by Men's Central Jail, coupled with your own statements, have established the following:

1. That in violation of the Manual of Policy and Procedures Sections 3-01/030.10, Obedience to Laws, Regulations and Orders, as it pertains 3-01/050.05, Performance of Duty; and/or 3-01/050.10, Performance to Standards, on or about April 15, 2017, while on duty at Men's Central Jail, you failed to perform to the standards established for your rank of Deputy Sheriff and/or failed to perform your duties in a manner which established and maintained the highest standard of efficiency in carrying out the functions and objectives of the Department, when you failed to comply with Department policies, procedures, and training, as evidenced by, but not limited to:

a. being present and failing to provide aid, and/or help, and/or assistance to your partners who were engaged in a violent physical altercation with an inmate at or near the laundry room of Module 2600 and were requesting for assistance; and/or,

b. walking toward the altercation with the inmate and seeing CA [redacted] use OC spray on the inmate and rather than rendering immediate assistance you walked away from the incident.

2. That in violation of the Manual of Policy and Procedures Section 3-10/100.00, Use of Force Reporting and Review Procedures; on or about April 15, 2017, you failed to perform to the standards established for your rank of Deputy Sheriff and/or failed to perform your duties in a manner which established and maintained the highest standard of efficiency in carrying out the functions and objectives of the Department, as evidenced by, but not limited to:

a. witnessing Reportable Force used by other Department members and failing to advise your immediate supervisor as soon as possible; and/or,

b. reporting inaccurately and insufficiently your observations after being prompted to do so by your supervisor.

3. That in violation of the Manual of Policy and Procedures Sections 3-01/030.10, Obedience to Laws, Regulations and Orders, as it pertains 3-01/005.10, Responsibility for Documentation, and/or 3-01/100.35, Dishonesty/False Information in Department Records, on or about April 15, 2017, you failed to perform to the standards established for your rank of Deputy Sheriff when you authored and submitted a Supplemental Report (Red Tip/SH-R-77) with inaccurate, and/or false,

and/or improper information or material matter regarding a force you witnessed involving Department members at or near the laundry room of Module 2600.

4. That in violation of the Manual of Policy and Procedures Sections 3-01/040.69, Honesty Policy; and/or 3-01/040.70, Dishonesty/False Statements; and/or 3-01/040.75 Dishonesty/Failure to Make Statements, and/or Making False Statements During Departmental Internal Investigations, on or about November 28, 2017, you provided false, and/or misleading, and/or incomplete statements during your recorded interview regarding your actions on April 15, 2017; as evidenced, but not limited to:

   c. stating you went into the laundry room when you heard the commotion and/or call for assistance but deputies had full control of the inmate when video of the same incident clearly shows they were still struggling with the inmate and used force in your presence to gain control of the inmate.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet, which are incorporated herein by reference.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Joanne Sharp, on May 3, 2018, at 1100 hours, in her office, which is located at 450 Bauchet Street. Room 826, Los Angeles, California 90012. If you are unable to appear at the scheduled time and wish to schedule some other time prior to May 3, 2018, for your oral response, please call Chief Sharp's secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief Sharp's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Sharp's office no later than May 3, 2018.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave, which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

Josie S. Woolum, Captain
Internal Affairs Bureau

JSW:JMR:jr
(Professional Standards and Training Division – Internal Affairs Bureau)

IAB FILE NO. IV2425564

Attachments

c: Joanne Sharp, Chief, Custody Services Division – General Population
Patty Choe, Operations Assistant I, Internal Affairs Bureau
Georgette Burgess, Departmental Employee Relations Representative, Employee Relations Unit
Vince Vasquez, Operations Assistant I, Advocacy Unit



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

August 28, 2020

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of **CLINTON KELLY** for a hearing on his **discharge**, effective May 10, 2018, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 18-108**.

The Civil Service Commission, at its meeting held on July 1, 2020 approved findings in the above-entitled case. The petitioner's objections were overruled. Commissioner Duran dissented.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Mahdi A. Mohamed
Executive Director

Enclosure

c: Clinton Kelly
Sherry Lawrence
Nohemi Gutierrez-Ferguson
Stephen Biersmith

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the ***discharge****, effective May 10, 2018, from the position of Deputy Sheriff, Sheriff's Department, of* **CLINTON KELLY** **(Case No. 18-108)**	ORDER OF THE CIVIL SERVICE COMMISSION

On July 1, 2020, the Civil Service Commission of the County of Los Angeles over-ruled the petitioner's objections. The Commission adopted as its final decision, the findings and recommendation of the Hearing Officer, Stephen Biersmith, to sustain the Department. Commissioner Duran dissented.

Dated this 28th day of August, 2020.

STEVEN AFRIAT, President

Dissented — PERCY DURAN III, Member

NAOMI NIGHTINGALE, Member

JOHN DONNER, Member

DICKRAN TEVRIZIAN, Member

COUNTY OF LOS ANGELES CIVIL SERVICE COMMISSION

In the Matter of the Appeal of **CLINTON KELLY** Appellant vs. **L. A. COUNTY SHERIFF'S DEPARTMENT** Respondent.	)	FINDINGS OF FACT CONCLUSIONS OF LAW & RECOMMENDATION Case No. 18-108

APPEARANCES

For the Appellant: Sherry H. Lawrence
Stone Busailah
1055 E. Colorado Blvd, Suite 320
Pasadena, CA. 91106

For the Respondent: Ms. Nohemi Guiterrez-Ferguson
Gutierrez, Preciado & House
3020 E. Colorado Blvd.
Pasadena, CA 91107

Hearing Officer: Stephen Biersmith, Esq.

Petition Granted on August 8, 2018

Hearing Dates May 6th, May 9th and May 14th of 2019

I. EXECUTIVE SUMMARY

A. Parties

a. Appellant — Clinton Kelly
(Employment history attached as Appendix 1)

b. Department — Los Angeles County Sheriff's Department

*

B. ISSUES: On December 27, 2018 the Civil Service Commission certified the following issues:

1. Are the allegations contained in the Department's letter of May 9, 2018 true?
2. If any or all are true, is the discipline appropriate?

C. SUMMARY:

The Appellant was discharged for several policy violations which generally involved his failure to respond and assist fellow officers who were involved in an altercation with an inmate on or about April 18, 2017. It was also alleged he made false statements in a written report he submitted regarding the incident and subsequent dishonest/false statements during his administrative interview. After a full review of the evidence presented and consideration of the written arguments submitted by both parties, the Hearing Officer found the majority of the allegations were supported by the evidence and the discharge appropriate.

II. DISCUSSION

A. Procedural History

1. On April 18, 2018 the Department sent a letter to the Appellant notifying him of its intent to discharge him from service. A *Skelly* hearing was held and the Appellant was given an opportunity to respond. The Department subsequently discharged the Appellant effective May 9, 2018.
2. On May 29, 2018 the Appellant filed a notice of appeal. On August 8, 2018 the Commission referred the matter to a hearing officer.
3. A hearing was held on May 6, 2019, May 8, 2019 and May 14, 2019.

4. The Appellant's employment history is noted in Appendix 1 and a list of Exhibits presented at the hearing is attached as Appendix 2. A listing of the witnesses and a brief summary of their testimony is attached as Appendix 3.

B. Discussion of the Allegations

Section 3-01/030.10 (Obedience to Laws, Regulations and Orders as it pertains to Section 3-01/050.05 (Performance of Duty) and Section 3-01/050.10 (Performance of Standards)

The Department asserted the Appellant violated these policies when he failed to provide aid or help his partners, who were requesting assistance and engaged in a violent physical altercation with an inmate at or near the laundry room. There was little dispute that prior to the physical altercation the Appellant was aware something was happening with the inmate and that initially he took steps to support them. He asked Deputy [redacted] and then Deputy [redacted] to assist. [redacted] did not testify, but he reportedly told the Appellant he also had to complete his Title 15 inspections. [redacted] confirmed the Appellant's representation that he sent him to be in standby mode to assist [redacted] and [redacted] (Exh. 37 p. 6). During his interview the Appellant said he also asked Deputy [redacted] at some point to lock the door to the day room so other inmates would not interfere with whatever was going on (Exh. 37 p. 7).

It was the Appellant's lack of involvement after the initial verbal confrontation which fell well short of what was respected of a custody deputy. At some point after the inmate became uncompliant and got physical and a [redacted] call went out. The Appellant said he heard it on the radio and Deputy [redacted] noted when such a call is made all floor personnel were to respond to the area until a [redacted] gave notice the incident was over (Exh. 37 p. 8). When the call "[redacted] was made, the Appellant was still in the area, knew what was going on, and could have responded before the arrival of the other deputies. Initially the Appellant said he heard a commotion, but did

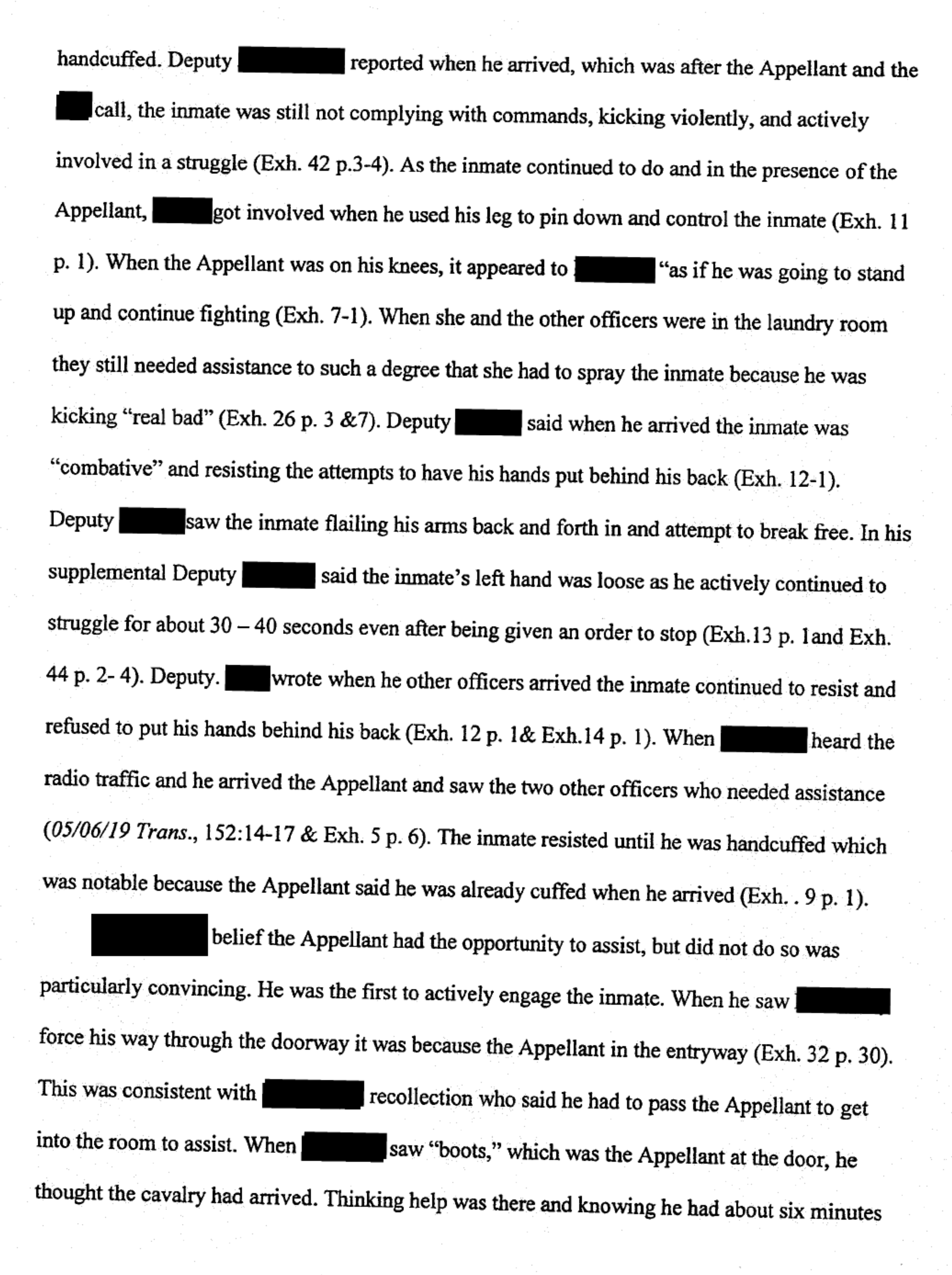
not hear [redacted] tell the inmate to stop fighting, however, in his investigation statement he admitted to both having heard her issue commands and knowing there a fight was underway.

A video recording of the incident clearly indicated that even though he saw Custody Assistant [redacted] using OC spray on the inmate, he walked away rather rendering assistance. He could be seen initially looking towards the other officers but not responding. He subsequently peaked back down the hall towards the laundry room and then eventually moved towards that location (Ehx. 22).

[redacted] and [redacted] characterized the Appellant as one who would back up his partners and there were performance evaluations which noted the same. Sill the weight of the evidence indicated he had a duty to assist those officers but intentionally failed to do so at any level once the confrontation with the inmate became physical (Exh. F p. 1 &10). [redacted] believed he should have assisted and was upset at the Appellant when he later asked him what happened even though he saw and/or was present when the confrontation occurred.

The Appellant gave several explanations for not providing any additional assistance including that when he first arrived the inmate was secured. At some point the inmate was fully restrained. It was not clear when the Sergeant arrived. When the Sergeant did so he ordered a gurney and the inmate was under control (Exh.15-1). Snap photos taken from the video showed the inmate on his knees with his hands behind his back, but the actual video recording before and after that particular frame showed that was not the case when the Appellant first arrived and looked into the laundry room (Exh. 22, C & D).

Importantly, every other person, who was present in or near the laundry room, were clear in their belief the inmate was not restrained and still presented a danger to their fellow officers. After he reviewed the video Chase rightfully believed the struggle continued until the inmate was


handcuffed. Deputy [redacted] reported when he arrived, which was after the Appellant and the [redacted] call, the inmate was still not complying with commands, kicking violently, and actively involved in a struggle (Exh. 42 p.3-4). As the inmate continued to do and in the presence of the Appellant, [redacted] got involved when he used his leg to pin down and control the inmate (Exh. 11 p. 1). When the Appellant was on his knees, it appeared to [redacted] "as if he was going to stand up and continue fighting (Exh. 7-1). When she and the other officers were in the laundry room they still needed assistance to such a degree that she had to spray the inmate because he was kicking "real bad" (Exh. 26 p. 3 &7). Deputy [redacted] said when he arrived the inmate was "combative" and resisting the attempts to have his hands put behind his back (Exh. 12-1). Deputy [redacted] saw the inmate flailing his arms back and forth in and attempt to break free. In his supplemental Deputy [redacted] said the inmate's left hand was loose as he actively continued to struggle for about 30 – 40 seconds even after being given an order to stop (Exh.13 p. 1and Exh. 44 p. 2- 4). Deputy. [redacted] wrote when he other officers arrived the inmate continued to resist and refused to put his hands behind his back (Exh. 12 p. 1& Exh.14 p. 1). When [redacted] heard the radio traffic and he arrived the Appellant and saw the two other officers who needed assistance (*05/06/19 Trans*., 152:14-17 & Exh. 5 p. 6). The inmate resisted until he was handcuffed which was notable because the Appellant said he was already cuffed when he arrived (Exh. . 9 p. 1).

[redacted] belief the Appellant had the opportunity to assist, but did not do so was particularly convincing. He was the first to actively engage the inmate. When he saw [redacted] force his way through the doorway it was because the Appellant in the entryway (Exh. 32 p. 30). This was consistent with [redacted] recollection who said he had to pass the Appellant to get into the room to assist. When [redacted] saw "boots," which was the Appellant at the door, he thought the cavalry had arrived. Thinking help was there and knowing he had about six minutes

after being sprayed before becoming incapacitated, [redacted] began to back off the still struggling inmate. It was [redacted] belief that had the Appellant given him assistance, he would not have been sprayed so many times (Exh. 32-3). He was expecting the Appellant to "at least grab his legs, hobble him, do something" (Exh. 32-5). Later the Appellant asked him what happened and in that he told [redacted] he was doing his walk at the time. [redacted] said it was a "weird" comment since he was present when the incident and saw what happened (Exh. 32 p. 6). In addition to not having helped, the Appellant never asked him if the area was secured (Exh. 5 p. 5). For his part the Appellant did not adequately explain, if the inmate was under control, why those officers who arrived after him felt they needed to respond in such a forceful manner.

Another reason the Appellant gave for not responding right away was what he characterized were the "dual interests" or whether to back up his partners or do his assigned Title 15 security check (Exh. 37:17). There was no dispute the Department emphasized the importance of such inspections. This type of monitoring was part of a DOJ "Joint Settlement Agreement' to address concerns about suicide prevention and mental health care at the jails (Exh. C.). Lass admitted the Mens' Central had a low level of conformity and was visited more often by OIG compliance personnel than any other facility (Exh. B. p. 5). Chief Chase also testified to the seriousness associated with getting them done in a timely fashion (*5/8/19 Trans*. 32:4-23:33:2-5). Completing his Title 15 inspection was one of the reasons the Appellant gave for sending [redacted] over to assist when he saw the inmate talking to the other officers instead of doing so himself. He was not the only one to give such an explanation. Deputy [redacted] told the Appellant he could not assist either in that he had to do his own inspection (Exh. 37 p. 18).

The Appellant's belief such inspections were a priority even when an officer involved struggle breaks out was misplaced. This was the case even though it did not appear as if there

was any explicit written guideline as to which obligation took precedence. The Department did not contest the Appellant's assertion more inmates commit suicide during holiday periods, which he believed was relevant since the incident occurred around Easter. [redacted] confirmed there were occasions when inspections were either not done properly or on-time and an inmate was injured or committed suicide. There was also no disagreement with the Appellant's representation one could be disciplined if inspections were no completed in a timely fashion. Chase agreed that was the case.

The problem with the Appellant's rational for delaying and/or not getting involved to assist was that every other witness recognized the greater necessity of helping fellow officers involved in a physical confrontation. [redacted] testified such assistance took precedence over the Title 15 inspection (*05/06/19 Trans.*, 164:18-21) [redacted] and [redacted] said much the same (*05/08/19 Trans.*, 73:12-22). [redacted], the Appellant' witness, concurred and noted he would continue to assist until heard a [redacted] As to any disciplinary action Lass noted if it was necessary to miss or be late for an inspection, the employee could call in and then document why that was the case. If he did so, the Department would be taken his reasons into consideration. If the deputy was injured during such an altercation another would be assigned to take his inspection spot. The Appellant did not clarify, if timeliness was so paramount, why he was not questioned about and/or discipline when he was late doing another round that very day. The Appellant also did not explain why he stood there for several minutes without helping, but was still able to timely complete that particular round (Exh. 25).

Despite the Appellant's assertion to the contrary, there was other persuasive evidence which showed he could have completed his Title 15 watch timely even if he had rendered assistance. Chase believed the Appellant could have done so and still completed his walkthrough

within 30 minutes, the maximum time interval allowed between inspections. Chase had never heard of a round taking 30 minutes but agreed they could vary in length (*05/08/19 Trans.*, 64:4-7). The Appellant initially confirmed a similar shorter duration during his interview when he also said one would take only a couple of minutes. It was not until later that he represented they took between 15 and 30 minutes or that there were occasions when he had to spend more time doing such things as answering questions from inmates and searching for contraband.

In this instance, when one compares the time the incident happened to the clock records, it did appeared as if he had enough time to both provide some assistance and still complete his inspection (Exh. 25). It did not take the other officers much time at all to respond to the location once the "[redacted] call went out and then to secure the inmate once they arrived. It was notable the Appellant was in the area for that entire period from the initial verbal outburst until full restraint yet he was still able to get his own work done (Exh. 25 p. 1). At a minimum then, he could have provided some help. There was no need to have to make any judgment call between such a response and the requirements of a Title 15 inspection. The correct course of action was clear and with the welfare of his fellow officers at risk, time sensitive.

The Appellant also believed when the other officers responded that created a shortage in the other areas of the facility. This additional safety concern was another reason why he opted to do or preparing for his inspection rather than assisting the other officers. Chase and Lass did not totally disagree a security void could occur when other officers respond, but also noted it depended on the situation. There were no such issues when everyone was locked down. In addition, the modules were never completely abandoned with at least 2 or 3 deputies always in the area. Another problem with such an assertion was the fact this was the case whenever

multiple officers respond to "[redacted] calls. On those occasion there mostly likely was a similar diversion of resources. The Appellant did not explain why this case was different.

Even though the Appellant eventually arrived at the laundry room, he gave another reason why he still chose not to provide immediate assistance. It was his belief that he first needed to put on protective gloves. This latter explanation was inconsistent with the Appellant's interview statement when he initially said he did not know why he needed to put them on (Exh. 37 p. 15). Still his glove explanation was not totally without some rational. It was true the inmate was sprayed with OC several times before he arrived and that the effects of exposure could be disabling. Both [redacted] and [redacted] were accidently sprayed (Exh. 5 p. 13) [redacted] also noted everyone who responded to the "415" call would have been exposed (*5/8/19 Trans*. 88:20-25). [redacted] even ended up having to withdraw when he believed the negative effects of the spray on his person were imminent.

Hiraoka testified it was possible when the Appellant looked back the second time and then put on his gloves that he meant to get involved. It was more probable the Appellant simply was in no hurry to assist despite the obvious need for assistance. For several minutes he was the only other officer on site and aware of the altercation. Notably, the video showed even with his gloves, the Appellant still did not assist. Instead he was seen being pushed aside by other officers, who even though they just arrived, immediately recognized the need to get involved for the safety of those already present. The problem with relying on the gloves as a preventative step was that it was outweighed by the fact that two of his fellow employees were having difficulty trying to restrain the inmate and clearly needed additional support. In this instance [redacted] and others believed time was of the essence and as such, would not have taken time to put on gloves before giving assistance.

There did not appear to be a specific written policy which designated which option, gloving up to protect one for the spray or immediately getting involved to mitigate possible injury to another was the priority. Regardless, Hiraoka correctly said the Appellant should have engaged regardless of exposure to the spray (*5/06/19 Trans.*, 110:6-10). Based on his experience Lass said when deputies are engaged and at risk of injury, one does not take time to glove up (*05/06/19 Trans.*, 133:11-16). It was clear which action the other officers thought was the priority. None of those who responded hesitated to first put on their gloves. They rightfully decided the safety of their fellow officers was paramount and outweighed possible OC exposure.

When the Appellant was asked why he did not render aid when the other deputies did so, the Appellant responded with "I don't know," "my head in the ballgame" and/or that he was "focused on my security checks" (Exh. 37 p 21). It was not until later did the Appellant say he did not do so because of a low "battery," or that additional personnel were already there to help. There was nothing to dispute his assertion his radio was not "chirping" at the time of the altercation. Such sounds indicated a low charge. Since it was difficult to know exactly when it would die, it was reasonable to replace it before the Appellant started or resumed his inspection. Even so, to use it as an excuse for not calling for assistance or rendering aid fell short of what was expected of an officer. The Appellant did not state why he failed to direct [redacted] or another officer to call for assistance instead. He also did not explain, even if his battery was low, why he did not even try to transmit and then confirm receipt of the same. He apparently was again able to witness much of what occurred, get his battery, and still complete his inspection with time to spare.

The Appellant's testimony that responding to such an incident was more dangerous than proceeding with his cell inspections was puzzling. Such a position indicated he still did not

accept responsibility for his actions and would repeat the same. The danger associated with his preferred course of action was speculative while the other was real and actually occurred.

Section 3-01/100.00 (Use of Force Reporting and Review Procedures)

As to having witnessed force being used and advising his immediate supervisor, the Department's alleged he failed to do so as "soon as possible" (Exh. 1 p. 2). It asserted the Appellant failed in this responsibility even though he admitted to having witnessed the physical altercation and use of OC spray, both of which he acknowledged were reportable use of force incidents. Neither he nor anyone else in the area when the verbal confrontation started contacted a supervisor. It was unclear why that was the case in that several witnesses testified the recalcitrant inmate policy required them to make such a notification. If an individual became resistant or said "no" to any officer's order, the witnessing officer was to immediately call a Sergeant, who was better trained to deescalate such situations.

The reasons given why none of them made any such a notification were somewhat unclear. Even though [redacted] said he was aware of the policy, he was unable to say why he did make one. [redacted] said she did not call a Sergeant in that she initially thought the inmate was obedient. The situation then quickly escalated and she did not have time to make such a contact beyond her "[redacted] call. With the exception of the Appellant and [redacted] who was talked to regarding her loss of control with the spray, there was no indication anyone else was disciplined for such their failure to report or for how they otherwise responded during the incident (Exh. 19 p. 1). The Appellant stated his biggest regret was not notifying a supervisor as he and the others were trained. Still to only hold the Appellant responsible for such a communication failure at the stage when there was only a verbal dispute with the inmate was an unfair assessment.

As to the assertion the Appellant also violated this policy when he had to be asked to submit a "Supplemental Report," the reasons he gave for not doing so right away were reasonable. There was no real dispute those who witnessed the use of force where required to notify supervision. It was unclear whether a written notification was always required. Chase said one did not have to submit such a report unless requested to do so by a supervisor (*5/8/19 Trans*: 47:13-16). It was not until sometime later that shift the Appellant was given such a direction.

There was the assertion the Appellant would not have turned one in had he not been prompted to do so by his Sergeant. When Lass called the Appellant to ask for his report the latter responded with "what for" apparently believing there was no need to do so even though he later admitted witnessing much of the altercation. The Appellant did not deny making such a statement only that he could not recall. There was also some confusion as to when he turned in his report. He worked a double shift that day and the time stamp on his submittal said it was received at 8:00 a.m. which indicated he turned it in before he went off shift. This was consistent with Chase's understanding they were to be completed before one went home (Exh. 10-1).

With the only specific time requirement in the policy being "as soon as possible," the Appellant's explanation that he first had to finish his inspection was acceptable even though others had already reported the incident. When Lass called him about 30 – 40 minutes after the inmate struggle to report to his office, the Appellant told him even then he needed to complete his rounds (Exh. 37 p. 9 & *5/6/19 Trans* 117:25-118:2 &:119-22-25). As noted above the Department placed great emphasis on completing Title 15 cell checks in a timely fashion. Even the Chief agreed it was reasonable for one to first finish his walk *(5/8/19 Trans*: 47:13-16).

As opposed to the priority associated with taking steps to protect his fellow officers, the inspections were more important than the timeliness of a written report. This was even more so

in this case since the Department was already aware of the altercation and was the reason why Lass called to the Appellant. In addition, the Department did not dispute the Appellant's contention the delay was due in part to there not immediately being a computer available.

Section 3-01030.10 (Obedience to Laws, Regulations and Orders) as it pertains to Section 3-01/006.10 (Responsibility for Documentation) and 3-01/100.35 (Dishonesty/False Information in Department Records)

After being prompted to submit a Supplemental Report (Red TIP/8H-R-77) by his supervisor, the Appellant violated these two policies when he turned in a defective narrative. It was inaccurate and incomplete both as to his having witnessed any use of force and his statement the inmate was "secure" and the officers in full control when he arrived at the laundry (Exh. 10). He eventually admitted these and other statements were false (*05/14/19 Trans* 168:5-7). They included his statement the inmate was not on his stomach with his hands behind his back as he originally noted in his report (Exh. 10 p. 1). Later during his interview he said the inmate was on his hands and knees (*5/14/19 Trans*., 71:3-9). The Appellant still maintained he did not see any use of force by anyone besides [redacted] and [redacted] even though the video shows several of the other responders were actively involved in physically restraining the inmate (*05/14/19 Trans*., 71:10-19). In his report he also wrote "it appeared they had full control of S/Young" and that he had confirmed his "partners were safe" (Exh. 10). As noted above per the video and the testimony of other participants, neither of these statements were true.

As to why he would have made such representations, the Appellant said he just went with what he saw and that what the video showed was not what he remembered had occurred (Exh. 37 p. 11). Such a position was not to be totally discounted in that Department policy recognized such a possibility. Its policy on "Video Admonishment" noted a video recording may not

necessarily present an incident the same as viewed through a human's eyes" and that "differences have to do with a field of view, focus of attention, and interpretation" (Exh. A). [redacted] testified it was his understanding deputies, who reported a use of force, were to do so truthfully and accurately based on their perception. The question then was whether the Appellant's statements of what he believed he saw were accurate and if not, whether they were reasonable interpretations so as to show he did not intend to mislead. After reviewing the video, the testimony presented by the Appellant and others, several of his recitals were neither accurate nor reasonable.

During the hearing the Appellant agreed his "Supplemental Report" was not the best and presented several other explanations as to why he mistakenly wrote what he did. The first was that at the time of the report, he could not recall details of the incident given he was tired after having worked the maximum 96 hours. The Department did not dispute his claim of fatigue. This explanation though was not persuasive for several reasons including the proximity to the event when he wrote his report. He did so that very same day when events should have been fresher as opposed to later when he tried to recollect. Secondly, he made no mention of fatigue as possibly affecting his recall then or later during his subsequent interview (Exh. 37 & 38).

Even though the Appellant now represents he did not intend to file a false report, he also acknowledged he failed to put in several details. The Appellant stood by his belief that he did not intentionally mean to mislead and only wrote was what he perceived. He also said he did not have the benefit of reviewing the video beforehand. What he did not explain was why none of the other involved officers viewed the video before submitting their own reports, yet their submittals were apparently accurate. Lass testified he had not shown the video to anyone.

The Appellant was given not one, but two opportunities to resubmit a more accurate report. Lass testified that when he read the Appellant's original report, he told him it was incomplete and inaccurate based on his viewing of the video. As an example, Lass also told him that he needed to disclose what he did during the incident in that it appeared as if he had not responded. When the Appellant submitted a second one Lass asked if he wanted to make any changes, but he declined. The Appellant could not recall such a meeting or that Lass ever gave a report back to him to amend. He believed what was submitted into evidence was his original. This was not helpful to his case in that he was offered a third opportunity to amend what he now says was his initial draft during his interview. He was asked twice during that meeting if what he wrote was accurate, but once again responded he had nothing to add (Exh. 37 p. 4:22-23).

Sections 3-01/040.99 (Honesty Policy) and/or 3-01/040.70, (Dishonesty/False Statements) and/or 3-01/040.75 (Dishonesty/Failure to Make Statements and/or Making False Statements During Departmental Internal Investigations).

The weight of the evidence supported the Department's assertion the Appellant also made several false statements during his investigatory interview. Specifically, the Appellant told the investigators when he went to the laundry room area the other deputies had full control of the inmate, that "he wasn't moving," and that he was just "motionless." The inmate was also not on his stomach with his hands behind his back as he represented. The officers were still struggling with the inmate when he arrived at the laundry room area (Exh. 37 p. 8). As already noted above, it was clear from video, the testimony of other witnesses, and the Appellant's own admissions that none of these statements were a true reflection of what he said he saw happen.

The Department also alleged he made another false statement during his interview as to it only taking him two to three minutes to do his check (Exh. 37. P. 10). It pointed to his testimony

later when he said it took 15 -30 minutes to complete one (*5/14/19 Trans.*, 62:21-63:2). The shorter duration expressed during his interview was consistent with what Chase said was his understanding how long they took. If the Chief's representation was accurate, then the duration comment the Appellant made during his interview may have been a true representation of how long they took and not a falsification.

The Appellant understood he was required to give truthful statements in his report. He confirmed receipt of the pre-interview admonition (Exh. 39). At that time the Appellant again affirmed what he had written in his report was accurate before later testifying this was not the case. (Exh 3. p.40). His explanation that once again he was mentally not at his best and that he did not intend to make any false statements during his interview was again unpersuasive. The Department did not challenge his assertion that he was a "mess" with him having to basically remain in his house 24 hours a day, [redacted] The Appellant also said he was not feeling or sleeping well. Even though Lass testified he did not show it to anyone, the Appellant was distressed after another deputy (which he did not name) said the video was circulating around. What the Appellant did not explain was why he did not tell the investigator any of this prior to beginning his interview. He was specifically asked if there was any reason why they could not continue, but responded in the negative and elected to proceed (Exh. 37 p. 1). If the Appellant was having issues recalling a specific fact, he should have said so during the interview rather than give a definitive answer and then be responsible for the same.

Appropriateness of the Discipline

During the hearing the Appellant confirmed he was aware of the repercussions associated with violating the charged policies and procedures. [redacted] testified the Appellant was a

dictionary when it came to their knowledge (*05/14/19 Trans.*, 40:16-17). Prior to his administrative interview the Appellant was reminded he could be discharged should he make false statements (Exh. 39 p. 1).

The Department was expected to exercise good faith and consider the lowest level of punishment per the purpose and intent of the guidelines. In this case, the discipline assessed was consistent with those guidelines since the allegations were supported by the evidence (Exh. 3 pp. 4 – 5). The policy on "Use of Force Reporting" was the only one with a suspension as the maximum assessment. Those involving falsification only allowed for discharge. It was somewhat unclear why the "Honesty Policy," which seem similar to several others, gave the option of a 20 day suspension. Still, even this policy allowed for discharge.

Hiroaka testified officers must be truthful so as to maintain the public's trust. Although character witness testimony from [redacted] and [redacted] and his performance evaluations indicated he was an otherwise good and reliable employee, maintaining one's integrity was paramount and corrective steps necessary when there was a lack thereof. The failure to respond and assist his fellow officers, at least one of whom was injured, was also a serious matter. [redacted] testified to being upset when the Appellant asked him if he needed help with his written statement, even though he had seen much of what had occurred and elected not to come to his assistance.

As to any other mitigation, there was no evidence of any previous disciplinary action during his roughly ten years of service. His overall ratings for his most recent evaluations were "very good" to "competent" and included complementary supervisor comments such as an acknowledgement of his ability to work under pressure, turn in meaningful reports, complete his

work on time, and maintain an accurate count and identification of inmates as required by Title 15 (Exh. F and Exh. 3 p. 6).

The Appellant apologized for his behavior which he acknowledged let his fellow officers down (Exh. 37 p. 22). The Appellant admitted he would now do things differently, but only in part (Exh. 37 p. 24). He acknowledged he could have handled the situation better by calling the sergeant since the inmates were more likely to listen to him (*5/10/19 Trans* p. 85 13 -21). Even with his own admissions, the video, and testimony of those other officers who were present, the Appellant still did not believe he needed to do the other things of which he was accused any differently (*TR 5/10* p. 85:17-19). As such, there was the real possibility the Appellant would repeat such behavior should he be allowed to return to work. Given the seriousness of the allegations, there was no abuse of discretion with the decision to move forward with discharge.

FINDINGS OF FACT

1. The Appellant began his employment with the County on or about June 11, 2007.

[redacted]

3. In 2015 the Department entered into a Joint Settlement Agreement with the Department of Justice regarding the operation of jails in the County. One provision was the requirement that Custody staff "conduct safety checks in a manner that allows staff to view the prisoner to assure his or her well-being and security." On April 15, 2017 the Appellant was assigned to perform Title 15 watches to meet this obligation.

4. Two deputies and one custody assistant tried but needed additional assistance to restrain an inmate. Even though the Appellant observed and was the closet officer not yet involved in the altercation, he did not assist these fellow employees.
5. The Appellant would have been able to complete his Title 15 watch in a timely fashion had he rendered some assistance in restraining the inmate.
6. The Appellant violated Section 3-01/030.10 (Obedience to Laws, Regulations, and Orders) when he failed to adhere to the requirements of Section 3-01/050.05 (Performance of Duty) and Section 3-01/050.10 (Performance to Standards). He failed to perform to the standards established by his rank of Deputy Sheriff and when he failed to perform his duties in a manner which established and maintained the highest standards of efficiency in carrying out the functions and objectives of the Department. Even though the Appellant was present at the scene, he failed to provide aid and assistance to his partners who were engaged in a violent physical altercation with an inmate at or near the laundry room of Module 2600 and were requesting assistance. The Appellant violated these same policies when he walked towards the altercation and after he saw [redacted] using OC spray on the inmate, he walked away from the incident rather than rendering immediate assistance.
7. The Appellant sent another employee to assist the other officers during their verbal interaction with the inmate, but did not provide any further assistance during their subsequent physical struggle with the inmate when he appeared to threaten the other officers. One of those other officers was injured during the struggle.
8. The Appellant did not violate Section 3-01/100 (Use of Force Reporting and Review Procedures). He witnessed reportable force used by other Department members and

advised his immediate supervisor "as soon as possible" in writing. The physical altercation with the inmate occurred so quickly that neither the Appellant nor the officers involved were immediately able to notify their supervisor. The Appellant was justified in completing his Title 15 rounds prior to writing and submitting his report. There was no evidence to contradict the Appellant's assertion he was unable to do so earlier because he did not have access to a computer until later during his shift. The Appellant submitted the required "Supplemental Report" report prior to leaving work that day.

9. The Appellant violated Section 3-01/100 (Use of Force Reporting and Review Procedures) and failed to perform to the standards established for his rank of Deputy Sheriff and failed to perform his duties in a manner which established and maintained the highest standard of efficiency in carrying out the functions and objectives of the Department when he inaccurately and insufficiently reported his observations after being prompted to do so by his supervisor. The Appellant made a false representation in his "Supplement Report" when he wrote the inmate was "laying on his stomach with his hands behind his back with two deputies (Deputy [redacted] and Deputy [redacted] on their knees on both sides of him." Another false statement was when the Appellant wrote he "confirmed that my partners were safe, and the area was secured." The video, the testimony of several of the responding deputies, and the Appellant's own admission showed neither statement was true.

10. The Appellant violated Section 3-01/030.10 (Obedience to Laws, Regulations and Orders) as it pertains to Section 3-01/006.10 (Responsibility for Documentation) and Section 3-01/100.35 (Dishonesty/False Information) on April 15, 2017 when he failed

to perform to the standards established for the rank of Deputy Sheriff when he authored and submitted an inaccurate and false Supplemental Report regarding a use of force he witnessed involving Department member at or near the laundry room. The Appellant made a false representation when he wrote the inmate was "laying on his stomach with his hands behind his back with two deputies (Deputy [redacted] and Deputy [redacted] on their knees on both sides of him." Another false statement was when the Appellant wrote he "confirmed that my partners were safe, and the area was secured." The video, the testimony of several of the responding deputies, and the Appellant's own admission showed neither statement was true.

11. The Appellant violated Section 3-01/040.69 (Honesty Policy, Section 3-01/040.70 (Dishonesty/False Statements, and Section 3-01/040.75 (Dishonesty/Failure to Make Statements and Making False Statements) when he made false, misleading and incomplete statements during his November 28, 2017 recorded interview regarding his actions on April 16, 2017. The Appellant falsely claimed the deputies had full control of the inmate by the time he arrived at the laundry room when video of the same incident clearly showed the other officers were still struggling with the inmate and used force in his presence to gain control of the inmate. The Appellant was also dishonest when he stated the inmate at that time he arrived was on his stomach and motionless with his hands behind his back while being cuffed.

12. The Appellant did not violate Section 3-01/040.69 (Honesty Policy, Section 3-01/040.70 (Dishonesty/False Statements, and Section 3-01/040.75 (Dishonesty/Failure to Make Statements and Making False Statements) during his investigation interview when he said it took him two to three minutes to do a Title 15 check of the Modules.

This amount of time he said was necessary to complete this task was the same as represented by Chief Chase.

13. The discharge was consistent with the Department's disciplinary guidelines.

III. CONCLUSIONS OF LAW

1. The Department met its burden in proving the allegations contained in its letter of May 9, 2018 were true.
2. The Department met its burden in proving that the discipline was appropriate

IV. RECOMMENDATIONS

1. It is recommended all of the allegations be sustained.
2. It is recommended the Appellant's discharge be sustained.

Dated: 9/10/19

Stephen M. Biersmith, Esq.

APPENDIX 1

1. The Appellant began his employment with the Sheriff's Department on June 1, 2007.
2. [redacted]
3. [redacted]

APPENDIX 2

DOCUMENTS

For the Department:

1. Letter of Intent dated 4/12/18
2. Letter of Imposition dated 5/9/18
3. Disposition sheet dated 4/10/18
4. Personnel Investigation form
5. Investigative Summary
6. Incident Report, battery on custody officer dated 4/15/17
7. [redacted] supplemental report dated 4/16/17
8. [redacted]upplemental report dated 4/16/17
9. [redacted]supplemental Report dated 4/16/17
10. Kelly supplemental report dated 4/16/17
11. [redacted]supplemental report dated 4/17/17
12. [redacted] supplemental report dated 4/17/117
13. [redacted] supplemental report dated 4/16/17
14. [redacted] supplemental report dated 4/15/17
15. [redacted]supplemental report dated 4/18/17

16. Supervisor Lass's Force Report dated 4/19/17 (also signed off by watch commander and unit commander)
17. Force Report Lt. Bedonge dated 4/25/17
18. Force Report Captain Mancilla dated 8/28/17
19. Force Report Cmdr. Johnson dated 1/3/18
20. Force Medical report 4/15/17 (Not admitted)
21. Force mandatory notice to IAB, competed by LT. Bedonge dated 4/15/17 (not admitted)
22. Video footage of 2600/2800 laundry room from the date of the incident, 4/15/17
23. Video footage of 2600 lower tier (hallway outside of laundry room) from date of the incident 4/15/17
24. Multi-camera view showing both directions of the hallway outside of the 2600/2800 laundry room as well as the laundry room itself on the date of the incident 4/15/17.
25. Title 15 scanner report for Kelly on date of the incident, generated 6/9/17 (Note that Kelly's last scan prior to the incident was 6 minutes before, and he did not have another scan until 18 minutes after the incident).
26. Interview transcript C/A [redacted] taken 11/13/17 and 11/20/17.
27. Audio of C/A [redacted] taken 11/13/17 see enclosed CD
28. Audio of C/A [redacted] interview 11/20/17 see enclosed CD
29. Interview transcript Deputy [redacted] taken 11/14/17 an 11/20/17
30. Audio of [redacted] interview 11/14/17 see enclosed cd
31. Audio of [redacted] interview 11/20/17 see enclosed cd
32. Interview transcript Deputy [redacted] taken 11/9/17 and 11/16/17
33. Audio of [redacted] interview 11/9/17

34. Audio of [redacted] interview 11/16/17 see enclosed cd

35. Interview transcript Deputy [redacted] taken 11/9/17

36. Audio of [redacted] interview 11/9/17 see enclosed cd

37. Interview transcript of SOI Kelly taken 11/28/17

38. Audio of SOI Kelly interview 11/28/17 see enclosed CD

39. Kelly acknowledgement of administrative rights, dated 11/28/17

40. Interview transcript [redacted] 11/13/17

41. Audio of [redacted] Interview 11/13/17 see enclosed cd

42. Interview transcript [redacted] 11/9/17

43. Audio of [redacted] interview 11/9/17 see enclosed cd

44. Interview transcript [redacted] dated 11/13/17

45. Audio of [redacted] interview dated 11/13/17

46. Interview transcript [redacted] dated 11/13/17 (not admitted)

47. Patrol Failure form dated 9/24/13 (note admitted)

48. Office Correspondence re: Appellant's request to Captain Gooden to return to custody dated 8/28/13Appellant' s request to return to custody dated 8/28/13 (not admitted)

49. Office Correspondence re: Recommendation for Return to Custody dated 8/29/19

For the Appellant:

A. Los Angeles County Video Admonishment

B. Office of Inspector General County of Los Angeles Report dated April, 2017

C. Joint Settlement Agreement Regarding the Los Angeles County Jails (Relevant Pages there from)

D. Stilled Photo from CCTV

E. Schematic of 2600-2800 Cell block

F. Performance Evaluations

G. 2012 Guides for Discipline and Education-Based Alternative

APPENDIX 3

TESTIMONY

Lt. Tarshi Hiraoka

Hiraoka, who was assigned to Mens' Central jail, conducted an investigation after he was told there had been a use of force incident where the Appellant failed to assist. He reviewed the video and interviewed those involved. The video showed an inmate taking a fighting stance when the officers were trying to take him back to general population. As they pushed him back into the laundry room the Appellant was seen peeking around, going into a different room, and then back out without ever assisting the other deputies. He could be seen peeking around for about 12 seconds and waiting a minute before going down to the laundry room. Instead of rendering assistance once he got there, the Appellant just walked into the room where two of the officers, who were involved with restraining the inmate, ended up getting injured.

The Appellant told Hiraoka he heard a commotion from the laundry room, saw [redacted] give verbal commands, and spray inside that location. Appellant, who at the time was 15 – 20 feet away, told him that he did not observe [redacted] actually pepper spray the inmate, but the video showed he did or should have been able to see it. He also should have heard the officers when they gave their loud orders to the inmate to stop fighting. The Appellant also said when he got to the laundry room the inmate was already on the floor with his hands behind his back. He added that the other officers told him they had it under control. When Hiraoka interviewed those officers a second time, they all denied making such a statement.

The Appellant told him that he did not engage the suspect because he had to do his Title 15 cell reviews, which he did so. Hiraoka acknowledged the DOJ consent decree put great emphasis on doing such checks and that Mens' Central had a record of the most violations. Even though he Hiraoka agreed inmate safety was important and that these walks needed to be done every half hour, they could be delayed if situations, such as a fight with deputies occurs. In this instance, instead of first going into the laundry room, the Appellant walked away. He believed the Appellant had about 20 minutes before his next scan needed to be completed and as such, could have both assisted and completed his checks.

As soon as he was aware of the physical altercation, the Appellant should have gone to the laundry room and not walked away. Hiraoka agreed it was possible the Appellant looked back the second time because he wanted to check on the situation. He agreed coming into contact with the OC spray could have been a concern and that it was reasonable for him to put gloves on. Even though it could have indicated he was going to get involved, none of the other officers first stopped to put some on. Hiraoka still believe the Appellant should have engaged. If he became incapacitated the Department would have got someone to replace him.

Even though the Appellant told him he needed to retrieve a battery before he did his safety check. Hiraoka believed assisting one's partners was more important and that the Appellant had sufficient time to get a battery. He agreed one could not radio if he had a bad battery. There was no indication the Appellant tried to use his radio. The other officers could be seen talking to the inmate several minutes before the fight Even though the Appellant sent [redacted] to assist, he still should have responded to see what was going on. When the Appellant saw them wrestling with the inmate, he should have got involved.

Hiraoka confirmed those who use force were required to write the main report and those who witnessed it were to complete a supplemental report the same day. In this case the Appellant had to be asked several times to write one. When he did submit his report it did not match what could be seen in the video. During his interview, the Appellant acknowledged the video did not show what he had put in his report. It showed the inmate was neither safe nor secured when he arrived in that the other officers were still engaging him. The reports submitted from those officers involved stated they needed more assistance at that time. The Appellant's actions were a concern in that such reports needed to be detailed and truthful so as to maintain the public's trust. Those documents were used in lawsuits as well as independent review to see if what occurred was within policy.

Sgt. Darren Lass

After Lass heard a radio call that a deputy was involved in a fight he went to the location where he saw a cluster of deputies. He reviewed the tape of the incident but did not show it to the other officers. About an hour after the incident, Lass told the Appellant he needed to write a memo about what had occurred since he was a witness. The Appellant responded with "what force" and denied seeing anything. Lass said he saw him in the video and the Appellant could be seen watching the fight, peeking around the corner, and then putting gloves on before other deputies arrived and rushed by him. Lass confirmed when a deputy uses force he is to report it as soon as possible to his supervisor either in person or in a memo. In this case, the Appellant did not do so until he was asked.

After the Appellant turned in his memo the next day, Lass gave it back and told him to rewrite it in that there was going to be an issue with him just standing there not assisting. The statement was inaccurate and very generic since it only talked about what others did that day and not himself. He disagreed with the Appellant's statement the other officers had full control of the

suspect in that he was still actively fighting. He believed the Appellant could have held his legs to stop him from kicking. When Lass then asked the Appellant if he wanted to change his report, the Appellant told him it would be his memo. When he saw on the video the Appellant putting on gloves, Lass believed he did not want to get involved since one does not take the time to glove up when a fellow officer involved with an inmate might get seriously injured. It was unreasonable for him to wait as long as he did.

Lass agreed people get depressed during the holidays when there is an uptake in suicides. It was his belief at the time noted on the scan the Appellant still had a couple of inmates to check on. Even though Title 15 inspections were a priority and a primary responsibility, Lass still believed he should have gotten involved even if his inspections were going to be late. It was more important to report a use of force incident than complete one's walk. If it was necessary for a deputy to miss or be late with his inspection, even though it would still be a violation, he could call in and document the reason why. If the deputy was injured during an altercation and unable to do his walk, another person would be assigned to take his spot.

Lass acknowledged the facility had a lower level of compliance with inspections and that a Federal decree was in place regarding the jails. As to whether there was a security void when the other officers responded to such incidents, he believed it depended on the situation. The modules were never completely abandoned in that there were always 2 or 3 deputies in the area. There was no such security issue if everyone is locked down.

Dept. [redacted]

[redacted] was escorting the nurse distributing medication, when he heard radio traffic about a deputy involved in a fight. He then ran to the location and when he got there saw deputies struggling with an inmate. Since the inmate was not under control, both his partner and he went around another deputy, who was standing there, and engaged the inmate. [redacted] had

no recollection of the Appellant asking if everything and everyone were alright. When the Appellant arrived he believed the inmate was not under control. The Appellant was not involved in any Title 15 checks.

[redacted] confirmed if a radio was "chirping" it was in the process of dying. He agreed a "Title 15" deputy's priority was to make sure inmates were safe. Even if you were a Title 15 deputy you were still supposed to help if no one else is around. Although they did not work together that much, there were times when he saw him back-up other officers. The Appellant was always helpful to him.

Deputy [redacted]

On the day of the incident [redacted] saw Deputy [redacted] in the cage while two other officers were standing and talking to an inmate. The Appellant, who was eating some seeds, told him to go over there. After he heard the inmate say "he wanted to square it" [redacted] went to put his hands on his shoulder. When he did so the inmate raised his arm. [redacted] was sprayed twice as his partner grabbed the inmate and took him to the ground. Even after he was given an order, the inmate still tried to stand up and was struck three or four times before he said "he was done." When [redacted] saw "boots" he thought the cavalry had arrived. After [redacted] saw the Appellant at the door, he thought he had help and backed off from the inmate. [redacted] did so in that he knew his limits after being sprayed and before he became incapacitated. The inmate kept on struggling and it took about another minute before he stopped. At the time, he was not trying to stand up anymore but was also not giving up his hands.

During the struggle [redacted] trained his arm and hurt his back. Since procedure required he report such incidents, [redacted] he did so right after he washed up. Later he saw the Appellant who asked him what happened. He was surprised the Appellant would make such a

statement. [redacted] said he did not want to speak to him right then in that he believed the Appellant could have assisted. He did not think the Appellant was asking about his injuries. Deputies are taught to help each other. In this case the Appellant was the first one on scene and could have helped

[redacted] agreed an emphasis was placed on doing security checks. If there was an altercation when [redacted] was doing such checks, he would stop responded to the incident. In this instance time was of the essence and he would not have taken time to put on gloves before giving assistance. At no time during the incident did the Appellant ask [redacted] if he was needed or if the inmate was secured.

Chief Bruce Chase

Chase, who was an aid to the Chief, had a discussion with her about removing the Appellant prior to the completion of the report. Since the Appellant's supplemental report did not match what was seen in the video, the decision was made that he had given false information. In the video it appeared as if he was walking towards the incident and then turned back to avoid it. He was also seen later peeking down the hall to see if the fight was still going on. With some hesitation he put on gloves and as the other officers arrived before he backed away without getting involved. During the video it appeared if the struggle was active up until the time the inmate was handcuffed and still.

Chase emphasized that reports were to be written to the best of one's ability and completed before the individual left to go home. If someone saw a use of force they were to report it as soon as practical. Even though Title 15 checks are very important, there could be exigent circumstances when they could be delayed. From the log it appeared as if he had time to respond to the incident before his next check. As to the putting on of gloves because of the

pepper spray, if he had not done so and was exposed, someone else would have stepped in covered his Title 15 duties. Even if a radio was "chirping," it could still be used. Chase agreed it would be hard to know exactly when it would die and that it was reasonable for the Appellant to want to replace it at that time. Even if the Appellant's battery was dead, he still could have assisted the other deputies. It was true there were occasions when deputies were expected to make split second decisions. Chase believed that in this instance the Appellant was aware of what was occurring and there was no reason to fail to respond as he was trained. At the time of this incident, there were four persons at risk of injury.

Chase was told the Appellant had witnessed what occurred but did not report the incident. The Appellant was not approached about the incident until the video was viewed. Doing his checks did not relieve him of the need to report the incident. In this case the Appellant's lack of honesty was discussed after it appeared he left out any mention that he did not get involved even though he was in a position to see the altercation. His supplemental report was false in that the other officers did not really have full control and they never gave him any such confirmation. There were several reasons why it was important to file accurate reports, including for use in future prosecutions. Without truthfulness they cannot function in their job. Employees were given an admonitions before their interviews to be truthful.

Chase agreed they were under a lot of pressure to comply and do Title 15 inspections. After lawsuits were filed, a DOJ decree with an emphasis on safety and inspections was put into place after the Department had been accused of not providing adequate safety for the inmates. If someone appeared to be sleeping, it was the deputy's duty to check for signs of life. Making such determinations could be challenging. If an inmate wanted to talk to a deputy, that employee may do so before moving on. An exhibit of his clock punches showed the Appellant was in the middle

of his walk. This same record was used to monitor compliance with the 30 minute inspection directive. If employees failed to do their checks, they could be disciplined.

Chase agreed an officer could face a dilemma as to whether to do checks or back up their partners, then added the incident with the inmate that day went beyond being just verbal. Chase believed the Appellant could have become involved to some extent and still done his inspections in that his walk through did not take the whole 30 minutes. The Appellant was not questioned why one of his rounds took longer than that. At the time of the incident it did not look like as if the Appellant had begun his walk. He concurred that when officers leave their areas to assist, there could be a safety void. There were "rovers," available to respond while "fixed post" personnel back remained in the unit to provide basic safety. There can also be partial or modified lock-downs, but Chase did not know if such occurred in this case. One could expect an employee, who put gloves on, was going to become actively involved. When the '[redacted]went out, the Appellant was present and knew what was going on. He was in a position to respond before the other deputies. He was present before the call went out and could have engaged without gloves.

Deputy [redacted]

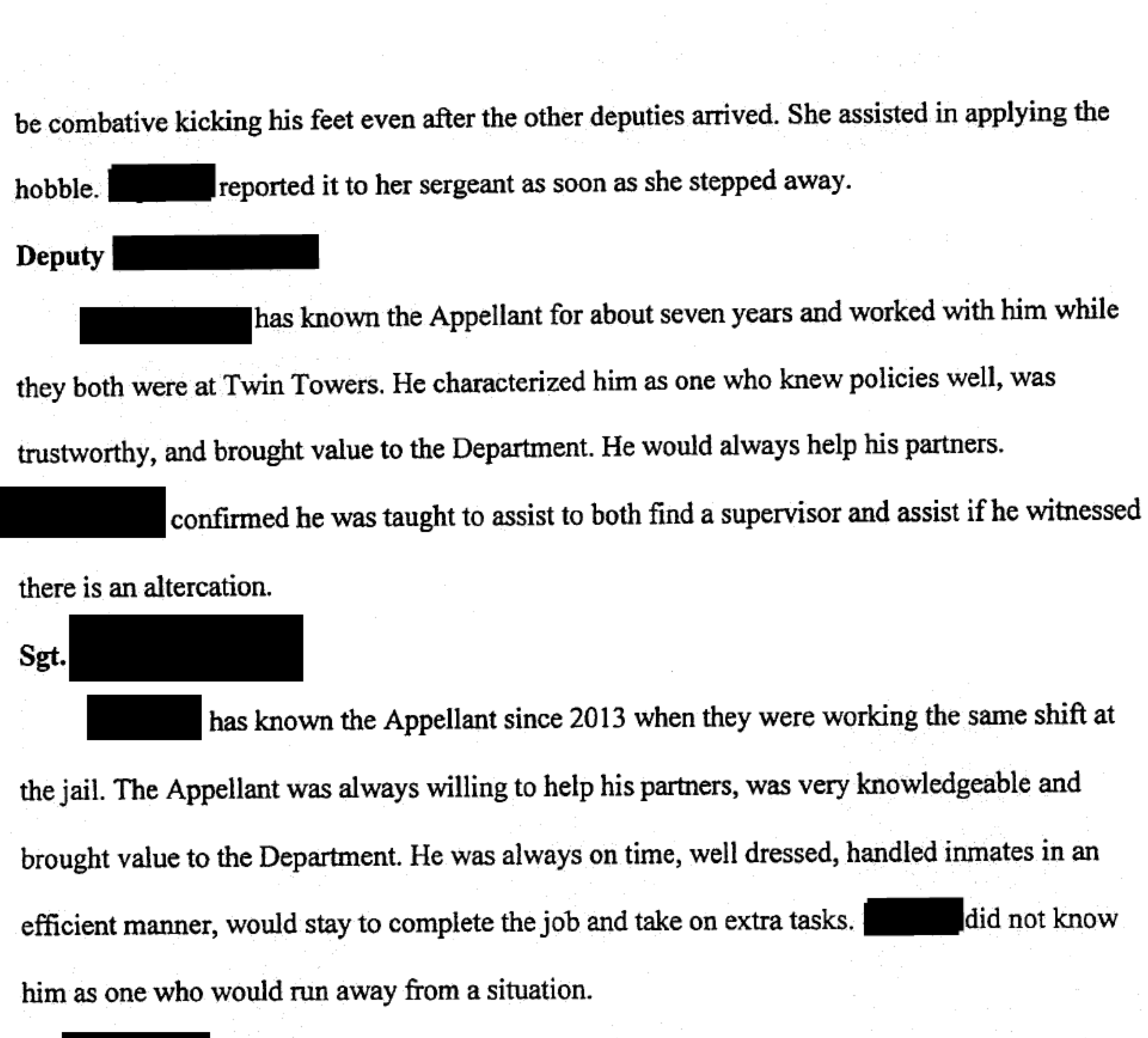
After [redacted] saw an inmate leaving the day room where he was not supposed to be, he told him he was going to be reclassified. As he approached the inmate, an altercation followed and [redacted] joined in to assist. When the Appellant saw the argument, he told [redacted] to go over to them. [redacted] ended up being injured because of the effects of the pepper spray. [redacted] was never trained to first put on gloves before engaging and possibly getting sprayed. He confirmed when a [redacted] call goes out, all floor personnel were to respond to the area until a [redacted] is made.

After the incident the Appellant spoke to [redacted] tried to give him tips on how to write his report. This interaction upset [redacted] because they had just got into a fight and the Appellant did not respond. [redacted] believed the Appellant could have done so since he saw the incident escalating. He would have welcomed any help when fighting an inmate. [redacted] did not remember seeing the Appellant when he was trying to restrain the inmate.

As soon as the incident was over, [redacted] spoke to his supervisor. When the other officers arrived the inmate still was not in handcuffs. The Appellant never asked him if he was safe and secure. Even though there was a policy to call a sergeant when an inmate does not respond to a command so as to deescalate the situation, there was no reason why he did not do so in this case. He agreed that by putting on gloves, it may have been the Appellant's intent to get involved. A deputy was to protect their safety and putting gloves on was an option. Even though deputies are taught the importance of Title 15 inspections he noted the safety of one's partners comes first. During such inspections, an officer was to make sure the individuals were alive. If they are not moving, one should try to get their attention. They are also expected to respond to inmate questions.

[redacted]

[redacted] was in the Unit when she noticed an inmate roaming. After the inmate was told of his reassignment from his trustee's job, he started to use profanity, [redacted] went over there and [redacted] came and stood by. While the inmate was pleading for his job, [redacted] did not call a sergeant thinking at the time he was not disobedient. She did not believe he was recalcitrant until he said "it was bullshit." When such situations arise they are trained to call the sergeant and get extra "prowlers." The sergeant would then talk to them and give additional direction. In this case, they did not have time before becoming engaged in a fight. When the inmate became combative she radioed there was a fight and sprayed him twice. He continued to



be combative kicking his feet even after the other deputies arrived. She assisted in applying the hobble. [redacted] reported it to her sergeant as soon as she stepped away.

Deputy [redacted]

[redacted] has known the Appellant for about seven years and worked with him while they both were at Twin Towers. He characterized him as one who knew policies well, was trustworthy, and brought value to the Department. He would always help his partners. [redacted] confirmed he was taught to assist to both find a supervisor and assist if he witnessed there is an altercation.

Sgt. [redacted]

[redacted] has known the Appellant since 2013 when they were working the same shift at the jail. The Appellant was always willing to help his partners, was very knowledgeable and brought value to the Department. He was always on time, well dressed, handled inmates in an efficient manner, would stay to complete the job and take on extra tasks. [redacted] did not know him as one who would run away from a situation.

[redacted] agreed deputies were supposed to report use of force as soon as possible and that those submittals were to be and true and accurate based on one's perception. He confirmed those assigned to do Title 15 inspections of each cell were required and that there was an emphasis on getting them done on time. He was aware of instances when they were not done properly or on-time and an inmate was injured or committed suicide. [redacted] believed if it came to doing the checks or helping a fellow officer in a physical confrontation, he would do the latter. Once he heard a [redacted] he would then continue with his checks.

The Appellant

The Appellant began working for the County in 2007. On the day of the incident he was a Title 15 deputy with the responsibility to make sure the inmates were well and to check for contraband. Inmates were more likely to arm themselves around holidays. During their walks inmates would ask questions and the officers were required to answer them. If the officer saw something wrong, he was supposed to stop, call for assistance and explain what was going on before continuing his walk. Each round typically took 15 – 30 minutes to complete and not in just a few minutes as he stated during his interview. They were told if they failed to do the rounds, they could be relieved from duty pending discharge. No one said during any of the briefings regarding the consent decree that one should instead of backing up a fellow officer. If there was an emergency, one would need to make a judgement call.

The Appellant agreed if he had instead chosen to help the other officers, the video could have been used to show why he delayed his inspection. The incident report said it occurred at 7:20 but he was not at the middle of the inspection until 7:38 pm. It was a security risk if one did not have a functional radio and at the time of the incident his radio was "chirping."

The Appellant was sitting in the officer's booth talking to [redacted] when he looked outside he saw an officer tell an inmate to go inside the laundry room. The Appellant was going to get his battery, but went along with them to see what was going on. The inmate wanted to keep his trustee job, but the officer told him to go get a set of "blues." At this point the time his security check was coming up. He went outside and saw a deputy and asked him to standby while the other officer handled the situation. The deputy told him he was unable to do so in that he was doing Title 15 checks at well. The Appellant then went over and asked [redacted] who was a "prowler," to assist. His thought process at the time was to get [redacted] to escort them to another segment of the jail because any situation had the possibility of going wrong.

When the Appellant first heard the inmate talking, he seemed cooperative." The Appellant looked and saw some other inmates standing around. He told them to get into the break room and asked another deputy to close the door. He admitted to having said otherwise during his interview. He was walking back to the hallway to get his battery when the incident occurred. The recalcitrant inmate policy meant if an individual resisted or said "no" to any order, they were to immediately call the sergeant, who was better trained to deescalate a situation. He agreed even though his battery was dead he could have gone to [redacted] to put out "[redacted] It was his biggest regret that he did not make such a call as they were all trained to do.

When the Appellant peaked back twice at what was going on down the hallway, he hesitated. He was having conflicting emotions and needed to decide whether he should get his battery and continue with his walk or go back and see what is going on. His decision to leave was a tactical one since he was required to do Title 15 checks. Deputies are required to make split second decisions. He subsequently decided then go back to the laundry room where he saw [redacted] and [redacted] standing over the inmate drenched in OC spray. He was about to go in and help as he put on his gloves. When he looked in the laundry room it appeared as if the inmate was under control and not in a position to harm the other officers. At the time he heard the others responding it crossed his mind that he might get sprayed. The Appellant acknowledged he backed off when his partners responded. At that moment he believed there was sufficient personnel around and the inmate was under control.

He still did not do so in that his thought process at the time was to go ahead with his inspections since all the other officers had already jumped on the inmate. The Appellant agreed spraying OC was a use of force and needed to be reported as soon as possible. He could not

recall when he heard the "415" call, but it was probably from the laundry room. He did hear [redacted] say "stop fighting."

His memory was not clear as to what happened once he arrived at the laundry room door, his memory was not clear. He was working 96 hours a month of overtime and was exhausted. He wrote his report without thinking much of the details. He was in the hall for only a few seconds. When he arrived at the laundry room the inmate was on his hands and knees and not trying to stand up. He was not assaulting the deputy. He was saying "I can't breathe." When he took out his gloves the inmate was not resisting. The last thing he saw was the inmate handcuffed and under control. He admits that watching the video that the inmate was not under full control. If the Appellant was concerned about their safety, he would have gone towards them.

He believed when the other officers on the floor all responded, it created a safety issue. Inmates tend to be aware of when something is going on, and use it to move things around or hurt someone, which made his check more important. He believed being in the laundry room was much safer than going on his security walk where anything could happened. The lockdown would not have prevented the inmates from hurting each other.

The Appellant confirmed receipt of the pre-interview admonition and knew of the requirement to give truthful statements. He was also aware of all of the policies he was charged with and their associated penalties. He did not intend to file a false report. At the time of the report, he could not recall details of the incident. He did his report at the end of his shift when he was tired having worked the maximum 96 hours. The Appellant acknowledged he did not put all of the details in his report and that it was not one of his better ones.

The Appellant did not recall Lass telling him that his report was too general or handing it back. Initially, he said it never happened and that he never had the opportunity to talk to Lass,

but later said he did meet with him. He only wrote one report and if Lass had issues, he would not have signed off on it. He did not say in his report the other officers verbally told him that they had the situation under control. It was based on his perception. When Lass called, the Appellant told him he would go to his office after he completed his walk. Making a report "as soon as possible" as noted in the policy, to him meant after his walk. He did not recall telling Lass "what force." When he asked [redacted] what happened, it was because the Appellant was only there at the beginning and the end and wanted to know what happened.

He acknowledged that he did not wish to add anything to his report during his interview. Even though it was not one of his better reports, he did not intentionally withhold information in his submittal. He acknowledged that in his report the Appellant stated he did not witness any other use of force and agreed several deputies could be seen in the video using force. The investigator did ask him if his report was correct and he said yes.

On the day of his IA interview, he was a mess having been in his house for basically 24 hours a day unable to see his mother or take his child to school. He was not feeling or sleeping well. He was distressed after another deputy had said the video was circulating around. In addition, the video did not depict what he recalled. As to why he failed to just say he did not know if he was so unsure, the Appellant said his head was just not in the game.

The Appellant apologized for his behavior. He believed he had learned from this incident, and if he returned to work he would teach others not to make the same mistake, write better reports, and make better tactical decisions. He felt good about his skills as a deputy. Since childhood it had been his dream to be a deputy. The video did not depict the kind of person he was. He did not mean to be dishonest on the report. He did not believe discharge was appropriate because he had to make a split decision.



OFFICE OF THE SHERIFF



COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM MCDONNELL, SHERIFF

May 9, 2018

Date of Department Hire 06/07/2011

Deputy Clinton S. Kelly, #[redacted]
[redacted]

Dear Deputy Kelly:

LETTER OF IMPOSITION

On April 12, 2018, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under IAB File Number IV2425564. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, it has been determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective as of the close of business on May 10, 2018.

An investigation under IAB File Number IV2425564, conducted by Men's Central Jail, coupled with your own statements, has established the following:

- 
[redacted]

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

[redacted]

[redacted]

[redacted] and/or 3-01/100.35, Dishonesty/False Information in Department Records, on or about April 15, 2017, you failed to perform to the standards established for your rank of Deputy Sheriff when you authored and submitted a Supplemental Report (Red Tip/SH-R-77) with inaccurate, and/or false, and/or improper information or material matter regarding a force you witnessed involving Department members at or near the laundry room of Module 2600.

4. That in violation of the Manual of Policy and Procedures Sections 3-01/040.69, Honesty Policy; and/or 3-01/040.70, Dishonesty/False Statements; and/or 3-01/040.75 Dishonesty/Failure to Make Statements, and/or Making False Statements During Departmental Internal Investigations, on or about November 28, 2017, you provided false, and/or misleading, and/or incomplete statements during your recorded interview regarding your actions on April 15, 2017; as evidenced, but not limited to:

   c. stating you went into the laundry room when you heard the commotion and/or call for assistance but deputies had full control of the inmate when video of the same incident clearly shows they were still struggling with the inmate and used force in your presence to gain control of the inmate.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet, which are incorporated herein by reference.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 500 W. Temple Street, Room 522, Los Angeles, California 90012.

If you have any questions, you may contact Tamora Johnson, of Internal Affairs Bureau, at (323) 890-5098.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

JOANNE SHARP, CHIEF
CUSTODY SERVICE DIVISION-GENERAL POPULATION